

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JIMMIE LEWIS § No. 618, 2006
FOR A WRIT OF MANDAMUS §

Submitted: December 20, 2006

Decided: February 5, 2007

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 5th day of February 2007, upon consideration of the petition of Jimmie Lewis for a writ of mandamus, as well as the State's answer and motion to dismiss, it appears to the Court that:

(1) The petitioner, Jimmie Lewis, seeks to invoke this Court's original jurisdiction by requesting the issuance of a writ of mandamus to the Superior Court. Although it is not entirely clear, it appears that Lewis wants to compel the Superior Court either to grant him a new trial or hold a hearing on Lewis' claims of ineffective assistance of his trial counsel. The State of Delaware has filed an answer and motion to dismiss Lewis' petition. The Court has reviewed the parties' respective positions carefully. We find that Lewis' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record reflects that a Superior Court jury convicted Lewis in October 2003 of carjacking, felony theft, and resisting arrest. Lewis was

sentenced in February 2005. His convictions and sentence were affirmed on direct appeal.¹ In January 2006, he filed a petition for postconviction relief, which the Superior Court denied. His appeal from that decision was dismissed as being untimely filed.² Lewis now has filed for a writ of mandamus arguing that the Superior Court erred in denying his pro se, post-trial motion seeking the appointment of new counsel and requesting that the Superior Court be compelled to grant him a new trial.

(3) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily failed or refused to perform its duty.³ An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.⁴ A petitioner who has an adequate remedy in the appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.⁵

(4) In this case, Lewis raised the issue of the Superior Court's refusal to appoint substitute counsel for him in his direct appeal. We

¹ *Lewis v. State*, 2005 WL 2414293 (Del. Sept. 29, 2005).

² *Lewis v. State*, 2006 WL 3604832 (Del. Dec. 12, 2006).

³ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴ *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

⁵ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

rejected that claim. Having litigated the issue once, Lewis may not use the writ process to attempt to argue the issue again.⁶ Moreover, Lewis is unable establish a clear legal right to a new trial.

NOW, THEREFORE, IT IS ORDERED that Lewis' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁶ *See id.*